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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2054 OF 2007

Kulbir Singh.....Petitioner

Versus

Union of India & Ors. ..Respondents

Mr. Kuljeet Rawal with Mr. H.R. Shetty i/b. H.R. Shetty & Co., for the Petitioner.
Mr. P.S. Jetly with Mr.Y.S. Bhate with Mr.Anurag Gokhale for the Respondents.

**CORAM: F.I. REBELLO &**
**J.P.DEVADHAR,JJ.**
**DATED: 5TH OCTOBER, 2007**

**P.C.:**

. Rule. Heard forthwith.

2. The petitioner by the present petition impugns the provisional order or assessment dated 3rd September, 2007 whereby the petitioner has been informed that the goods will be assessed provisionally on the basis of invoice value for Rs.59,52,430/- and on payment of full duty and certain other conditions as set out therein. However, as per the bill of entry the goods have been valued at Rs.10,08,851.03 paise. It is the case of the petitioner that in terms of the invoice value the goods were valued at Rs.22,500 US Dollars. It is further the case of the petitioner that the

Department had appointed a valuer who has valued the goods at Rs.15.00 lakhs. It is, therefore, submitted that the provisional assessment made by the respondents in the sum of Rs.52,59,430/- is without jurisdiction and the provisional assessment will have to be based on the valuation done by the Respondents expert at Rs.15.00 lakhs. Needless to say that this is without prejudice to the contention that the valuation done by the valuer is not correct valuation.

3. On behalf of the respondents reply has been filed by N.M. Vengurlekar, Deputy Commissioner of Customs. It is set out therein that the goods provisionally assessed at Rs.59,52,430/- which is the Agreement value between the petitioner and M/s.High Tech Gears Ltd. who are the buyers of the imported machine. It is then set out that after giving rebate of 30% the provisional assessment of the imported goods is Rs.41,66,701/- and the petitioner is accordingly liable to pay customs duty and furnish bond as set out therein.

4. Both the parties have reiterated their respective contentions in the pleadings in the petition and the reply filed.

5. After hearing the Counsel for the parties

and considering the provisions of Customs (Provisional Duty Assessment) Regulations, 1963 in our opinion the petition can be disposed of by issuing the following directions :-

(i) The Respondents to make provisional assessment on the basis that the goods would be provisionally valued at Rs.15.00 lakhs.

(ii) The petitioner will pay the full duty on the basis of bill of entry which is Rs.10,08,851.03 paise.

(iii) The balance between the declared value and the provisional value the petitioner will deposit 25% of the difference.

(iv) The balance differential amount will be secured by a bank guarantee in favour of Respondent No.3.

(v) The provisional order of assessment communicated by communication dated 3rd September, 2007 stands modified accordingly.

(vi) The petitioner also to furnish bond for the sum of Rs.15.00 lakhs.

(vii) The Respondents to intimate the amount of deposit and amount of bank guarantee in terms of what we have set out earlier within one week.

(viii) All other questions are kept open for consideration, if the petitioner move in appropriate proceedings.

(ix) Rule made absolute accordingly. No order as to costs.

**(J.P. DEVADHAR, J.)** **(F.I.REBELLO, J.)**